

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61078; File No. SR-OCC-2009-18)

November 30, 2009

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Allow Members to Deposit Customer Fully Paid or Excess Margin Securities to the Extent Permitted by No-Action Relief or Interpretive Guidance from the Commission or Interpretive Guidance from a Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on October 23, 2009, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3³ of the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from a Self-Regulatory Organization (“SRO”).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.15c3-3.

below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC rules currently prohibit members from depositing with OCC fully paid or excess margin securities that are carried for the account of a customer. This prohibition is intended to conform OCC's treatment of customer fully paid and excess margin securities to the requirements of Rule 15c3-3. The purpose of this proposed rule change is to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3 and is permitted pursuant to no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

Currently, a Commission no-action letter and related interpretive guidance from the New York Stock Exchange permits fully paid or excess margin securities carried in a customer account to be deposited with OCC in two circumstances. First, if a customer makes a specific deposit of fully paid or excess margin securities with a member to secure its obligations as an option writer⁵ then the member may in turn deposit the customer's securities with OCC.⁶ Second, any fully paid or excess margin securities held by a member to secure a customer's obligations may be posted as margin with OCC to the extent of 140% of the difference between

⁴ The Commission has modified the text of the summaries prepared by OCC.

⁵ OCC Rule 610(e)-(f).

⁶ New York Stock Exchange, New York Stock Exchange Rule Interpretations Handbook 505 (2004)(Interpretation 01 of Securities Exchange Act Rule 15c3-3(c) citing Chicago Board Options Exchange, Inc., SEC No-Action Letter (Feb. 19, 1975)).

the daily marking price deposits⁷ and the original proceeds of the customer's transaction.⁸ This proposed rule change would permit members to deposit customer fully paid or excess margin securities in these two circumstances as well as in any future circumstances identified by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder because the proposed change will safeguard securities and funds related to the clearance and settlement of securities transactions for the protection of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to

⁷ As required by OCC of its member.

⁸ New York Stock Exchange, New York Stock Exchange Rule Interpretations Handbook 505 (2004)(Interpretation 020 of Securities Exchange Act Rule 15c3-3(c).

⁹ 15 U.S.C. 78q-1.

which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2009-18 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of the OCC and on OCC's Web site at

http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_09_18.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).